

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Herman Salomon and Gloria Salomon, (Claimants) vs. David Netkin, Rickel & Associates, Inc., Atlantic Group Securities a/k/a Rickel Securities, John C. Sabo, Arnold Ira Cohen, and J.J.B. Hilliard, W.L. Lyons, Inc., (Respondents)

Case Number: 99-04345

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Herman Salomon ("H. Salomon") and Gloria Salomon ("G. Salomon"), hereinafter collectively referred to as "Claimants": Bruce A. Langer, Esq., a sole practitioner, New York, NY. Claimants originally appeared *pro se*.

Respondents, David Netkin ("Netkin"), Atlantic Group Securities, Inc. a/k/a Rickel Securities ("Atlantic"), John C. Sabo ("Sabo"), and Arnold Ira Cohen ("Cohen"): Ruthann G. Niosi, Esq., Law Offices of Ruthann G. Niosi, P.C., New York, NY.

Respondent, Rickel & Associates, Inc. ("Rickel"), did not make an appearance in this matter.

Respondent, J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard"): Kenneth M. Kolaski, Esq., Reed Smith LLP, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed on or about: September 22, 1999.

Amended Statement of Claim filed on or about: January 17, 2001.

H. Salomon signed the Uniform Submission Agreement: September 22, 1999.

G. Salomon signed the Uniform Submission Agreement: September 22, 1999.

H. Salomon signed a Revised Uniform Submission Agreement: January 25, 2001.

G. Salomon signed a Revised Uniform Submission Agreement: January 25, 2001.

Joint Statement of Answer filed by Netkin and Atlantic on or about: November 22, 1999.

Atlantic signed the Uniform Submission Agreement: January 17, 2000.

Netkin signed the Uniform Submission Agreement: January 19, 2000.

Rickel did not file a Statement of Answer or sign a Uniform Submission Agreement.

Sabo did not file a Statement of Answer or sign a Uniform Submission Agreement.

Cohen did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer and Crossclaim filed by Hilliard on or about: April 25, 2001.

Hilliard signed the Uniform Submission Agreement: April 23, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duties; misrepresentations; failure to disclose information; unsuitability; failure to carry out specific instructions; failure to supervise; and successor liability. Claimant's claim involved a variety of municipal bonds.

Unless specifically admitted in their Answer, Netkin and Atlantic denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants' demand for damages is improper as a matter of law and without foundation as a matter of fact; Claimants have failed to state a claim against Respondents for which relief can be granted; there are no losses, and as such no action lies; any losses suffered by Claimants were the result of market losses; Claimants failed to use due diligence with respect to the transactions and acts complained of and, accordingly, are barred from asserting or recovering for any such transactions or acts; the alleged losses of Claimants were proximately caused by their own conduct or negligence in relation to the transactions complained of and, therefore, Claimants are precluded from recovery herein; Claimants are not entitled to punitive damages as a matter of law; any damages suffered by Claimants were caused or contributed to by persons, conditions, or events beyond the control of Netkin and Atlantic; Respondents deny that they had full, complete, and contemporaneous knowledge of the acts complained of by Claimants, or that they ratified said acts; Claimants had full, complete, and contemporaneous knowledge of the acts complained of and did ratify said acts; Claimants authorized and directed the execution of all transactions in their securities accounts; Respondents, in discharging their duties, if any, to Claimants, acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; Respondents did not know, and in the exercise of reasonable care could not have known, of any untruths or omissions alleged by Claimants; Claimants sought and received trading profits over the entire time they traded with Netkin and Atlantic and took those profits willingly with full knowledge of the risks attendant to such activity; Claimants' claims are barred by the statute of limitations; Claimants have failed to establish a cognizable claim under Section 10(b) or Rule 10b-5 in any event; the courts have held that allegations of misrepresentation as alleged by Claimants are inadequate to state a claim for fraud; Claimants' suggestion that Respondents breached their fiduciary duty to them must fail, since Claimant's relationship, where there was one, was that of ordinary broker to clients;

Claimants have failed to state a claim for unsuitability; Claimants have failed to adequately plead negligent misrepresentation; and Claimants ratified their transactions in the least by failing to mitigate their alleged displeasure and/or losses on any individual investment.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$292,249.00, plus punitive damages in the amount of \$2,000,000.00, attorneys' fees, costs, and expenses.

Netkin and Atlantic requested:

- a. That the claims as against them be dismissed in their entirety;
- b. That the Panel order expungement of this claim from Netkin's CRD record;
- c. That the costs of the hearing not be held against Netkin and Atlantic; and
- d. That they be awarded any other just and equitable relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On November 14, 2002, Hilliard filed a Motion for Summary Judgement requesting dismissal of all claims against Hilliard, with prejudice. Claimants filed a response to Hilliard's Motion on November 21, 2002. Hilliard then filed a Reply Brief in further support of its Motion for Summary Judgement on November 26, 2002. After due consideration, the Panel granted Hilliard's Motion for Summary Judgement.

On November 14, 2002, Netkin filed a Motion to Dismiss Hilliard's Crossclaim. Hilliard filed a Response to Netkin's Motion to Dismiss on November 21, 2002. Netkin file a Sur-Reply to Hilliard's Response on November 25, 2002. After due consideration, the Panel granted Netkin's Motion to Dismiss Hilliard's Crossclaim.

By letter dated May 4, 2001, Hilliard advised NASD Dispute Resolution that he was withdrawing his Crossclaim against Sabo and Cohen.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Rickel has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Rickel present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Rickel, Sabo, and Cohen did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Crossclaim filing fee	= \$ 2,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Atlantic Group Securities and J.J.B. Hilliard, W.L. Lyons, Inc. are parties.

Atlantic Group Securities

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

J.J.B. Hilliard, W.L. Lyons, Inc.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences:	January 24, 2001	1 session
	October 29, 2002	1 session

Seven (7) Hearing sessions x \$1,200.00 = \$ 8,400.00

Hearing Dates:	January 7, 2003	2 sessions
	January 8, 2003	2 sessions
	January 9, 2003	2 sessions
	January 10, 2003	1 session

Total Forum Fees	= \$10,800.00
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1. The Panel has assessed \$5,400.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$5,400.00 of the forum fees jointly and severally against Netkin, Atlantic, Sabo, and Cohen.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Forum Fees = \$5,400.00

Total Fees = \$5,900.00

Less payments _____ = \$1,700.00

Balance Due NASD Dispute Resolution	= \$4,200.00
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2. Atlantic is solely liable for:

Member Fees _____ = \$7,600.00

Total Fees = \$7,600.00

Less payments	= \$	0.00
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Balance Due NASD Dispute Resolution	= \$7,600.00
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3. Hilliard is solely liable for:

Crossclaim Filing Fee	= \$2,000.00
<u>Member Fees</u>	<u>= \$7,600.00</u>
Total Fees	= \$9,600.00
<u>Less payments</u>	<u>= \$3,100.00</u>
Balance Due NASD Dispute Resolution	= \$6,500.00

4. Netkin, Atlantic, Sabo, and Cohen are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$5,400.00</u>
Total Fees	= \$5,400.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$5,400.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

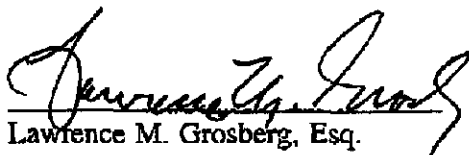
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ARBITRATION PANEL

Lawrence M. Grosberg, Esq.	-	Public Arbitrator, Presiding Chair
Kenneth M. Felder	-	Public Arbitrator
Thomas Caiaffa	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Lawrence M. Grosberg, Esq.
Public Arbitrator, Presiding Chair

1/30/03
Signature Date

Kenneth M. Felder
Public Arbitrator

Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date

February 5, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


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Kenneth M. Felder	-	Public Arbitrator
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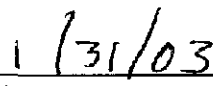
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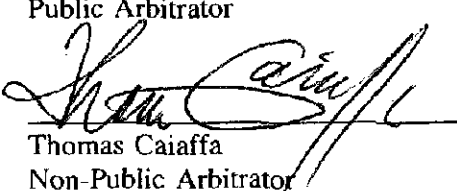
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Kenneth M. Felder
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Signature Date

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